



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 23, 1996

Mr. David A. Anderson
Chief Legal Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR96-0224

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36226.

The Texas Education Agency ("TEA") received a request for "all documents received from Garland Independent School District pertaining to Leonardine Davis." In accordance with instructions from this office, you resubmitted the requested information to this office with deletions of the names of students.¹ See Open Records Decision No. 634 (1995). You assert that the requested information is excepted from required public disclosure based on sections 552.103, 552.107(1), 552.117 and 552.122 of the Government Code.²

Section 552.103 excepts from required public disclosure information that relates to pending or reasonably anticipated litigation in which the governmental body is a party. See Open Records Decision No. 551 (1990). However, you did not raise this exception when you originally asked this office for an open records ruling. In our January 2, 1996 letter to you, we informed you that this office will not consider discretionary exceptions

¹We have marked additional portions of the records that we believe identify a student or a student's parents.

²As you do not now raise section 552.101 of the Government Code, which you raised in your original letter to this office, we need not address that exception.

that were not raised or arguments that were not made in your original request for an opinion. Discretionary exceptions to disclosure, such as section 552.103, must be raised by a governmental body within the ten-day deadline for requesting an open records decision, or else they are waived. *See* Gov't Code § 552.301; Open Records Decision No. 630 (1994).

Section 552.107(1) states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

This exception applies to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). "Unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). *See id.*

You state that "[t]he documentation involves information obtained by or on behalf of an attorney acting on behalf of the [TEA], in the course of carrying out its responsibility under [Texas Education Code sections] 13.046 and 35.050." We note that you have not marked the documents to indicate to which information section 552.107(1) applies. The Open Records Act places on a governmental body the burden of establishing why and how an exception applies to requested information. *See* Open Records Decision No. 532 (1989). None of the information appears to contain attorney advice or opinions or client confidences. We, therefore, conclude that section 552.107(1) does not except any of the requested information from disclosure.

You raise section 552.117 of the Government Code in regard to the home addresses, home telephone numbers, and social security numbers of current or former Garland Independent School District employees. If the employee has elected to not allow public access to this information in accordance with the procedures of section 552.024 of the Government Code, we believe TEA must withhold this information from required public disclosure pursuant to section 552.117.

Finally, you raise section 552.122 in regard to portions of the records that contain "test prompts." The records indicate that the "test prompts" are part of the TAAS test administered to fourth graders. However, you did not raise section 552.122 in your original request to this office. Accordingly, we believe TEA waived that exception.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", written in a cursive style.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/ch

Ref.: ID# 36226

Enclosures: Submitted documents

cc: Mr. Richard L. Arnett
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(w/o enclosures)